

OSWER DIRECTIVE # 9476.00-12

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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Closure Requirements

FROM: Marcia E. Williams
Director
Office of Solid Waste (WH-563)

TO: David A. Wagoner
Director
Waste Management Division
EPA, Region VII

This memorandum is in response to your memorandum of December 17, 1987, which posed a number of questions related to implementation of the closure regulations. As you know, we have discussed the issues over the phone with you several times since receiving your memo, both in the context of general policy, and also in the context of applying these policies to specific situations. We have responded to each point in turn.

Response to point 1:

Your question concerns the consistency between the new tank system regulations (51 FR 25422, July 14, 1986), which include post-closure care, and the closure requirements for container storage units. Since we have now revised the tank system standards as of July 14, 1986, we recognize that there are inconsistencies with the present container standards. We agree that the container storage requirements in Subpart I of 40 CFR Part 264 and 265 should be revised so that the Agency will have a consistent overall policy for closure of storage and treatment units.

Response to point 2:

You requested guidance on whether the clean closure policy for surface impoundments contained in the March 19, 1987 Federal Register notice can be applied to all hazardous waste management units in Iowa (which does not have final RCRA

authorization). The clean closure policy that was contained in the March 19, 1987 Federal Register should be applied to closures by removal of wastes from any RCRA regulated unit. Regulated units include landfills, surface impoundments, waste piles, and land treatment units. The regulatory language governing the level of cleanup described in each of the following sections, 264.197, 264.228(a), 264.258(a), 265.197, 265.228(a), and 265.258(a), is identical. Since the consequences of achieving clean closure are the same, regardless of type of unit, the general policy contained in the March 19, 1987 FR notice, and the specific details regarding the setting of cleanup levels in each medium that are contained in the upcoming "Surface Impoundment Clean Closure Guidance Manual", should be applied consistently to all units that close by removal of wastes. Another guidance document, "Clean Closure of Hazardous Waste Tank Systems and Container Units", is currently being developed. It is consistent with the manual for clean closure of surface impoundments; differing only where necessary because of the unique nature of tank systems and containers.

As stated in the March 19, 1987 preamble, Clean Closure cleanup levels are to be based on Agency-approved health based limits, rather than background, except where no such Agency-approved limit exists, and then background may be used as the basis for setting cleanup levels.

Response to point 3:

As currently envisioned, the proposed changes to the closure regulations would allow a landfill to defer closure to manage non-hazardous wastes only if certain demonstrations are made. Key among these is that managing non-hazardous wastes will not be incompatible with prior management practices. The preamble will include a discussion of potential incompatible or detrimental effects which are to be considered in evaluating a request to defer closure. For landfills these concerns include: subsidence, increased leachate formation, cap settlement and gas production. These potential detrimental effects could support a finding of incompatibility, which would be grounds for disapproving a deferred closure request.

This rule change will not affect enforcement actions. The opportunity to defer closure will be afforded to both permitted and interim status units. Facilities with units which have lost interim status can receive an operating permit which includes the LOIS unit. Waste receipt would not be allowed in the LOIS unit prior to permit approval.

Response to point 4

You have requested guidance on the issue of whether changes may be made at facilities operating without a permit or interim status and LOIS (loss of interim status) facilities under Section 270.72 when necessary to comply with corrective action and closure plans. This issue was raised in the context of the rule, proposed on August 14, 1987, 40 CFR Parts 265, 270 and 271 entitled "Changes to Interim Status and Permitted Facilities for Hazardous Waste Management; Procedures for Post-Closure Permitting; Proposed Rule". We are currently considering this issue and will address it in the final rule scheduled for Summer 1988.

Response to point 5

Your first question, in 5a and b, concerns your interpretation of 40 CFR Part 261 and the March 19, 1987 Federal Register notice, as they apply to wastes resulting from closure. Your interpretation is correct. As you stated, a characteristic waste must be managed under Subtitle C unless the material no longer exhibits any of the four characteristics specified in Part 261, Subpart C. It would not be sufficient to merely demonstrate that the materials no longer exhibit the one or more characteristics that had originally brought the waste under Subtitle C regulatory control. A waste that is listed as hazardous under part 261, Subpart D, and any waste residues or contaminated soil or debris that are removed from a unit during closure operations, are considered to be hazardous, unless the waste materials have been delisted, in accordance with Section 261.3.

Your first bullet point within point 5 referred to how DOD/DLA (Department of Defense/Defense Logistic Agency) recommends, in their "Conforming Storage Model RCRA Permit Application" (which accompanies their model permit), to determine whether or not decontamination washwater at a site is hazardous. As mentioned above, the determination should be based on whether or not the waste exhibits any of the four characteristics specified in Section 261.20. TOC and TOX are indicator parameters only. Therefore the DOD/DLA Model permit Attachment for Closure is incorrect when it implies that the concentrations of TOC and TOX define whether or not washwater is hazardous.

EPA has commented on this closure plan application extensively. DOD, however, has not responded to all of our comments on the model permit. Therefore, as we said in the August 8, 1987 cover memo to the model permit, EPA may request different or additional information if a permitting authority

finds part or all of the model permit application to be inappropriate. Copies of both the cover memo and EPA's

comments on DLA's conforming model permit application are attached for your reference. Please note EPA comments regarding waste analysis and the closure plan. We recommend that you use the recent draft report, "Clean Closure of Hazardous Waste Tank Systems and Container Units" instead as a guide to closure.

Your second bullet point within point 5 asked why, in certain situations, non-hazardous material must be removed from a landfill for clean closure, but then could conceivably be re-deposited legally in a sanitary landfill. We share your concern that this could be viewed as an inconsistency within our regulatory program. Two regulatory efforts, however, are currently underway which should address this potential problem. Your alluded to the first effort, redefining hazardous waste, in your memo.

As we move more towards concentration-based listings, inconsistencies may occur less often. You should note, however, that the basic reason why action levels in the clean closure situation are not consistent with hazardous waste identification levels is that action levels in the clean closure situation are based on the more protective of two possible scenarios: the direct ingestion of soil and ingestion of contaminated ground water, assuming no attenuation in the unsaturated zone or dilution in the ground water. The delisting levels, on the other hand, are based strictly on ground water ingestion, and are derived from a generic model that accounts for vertical and horizontal spreading of contaminants over a 500 foot distance in the aquifer. This difference may well remain even if changes are made in how hazardous wastes are listed. The answer to the problem is to complete the Subtitle D regulations for municipal landfills and surface impoundments. The result of these more stringent regulations should be that if waste is removed from a landfill for clean closure and re-deposited in a sanitary landfill, that the new landfill will be more protective of the environment than the original one.

We hope you will find this memo to be useful to you in interpreting these issues related to the implementation of regulations regarding closure. Please contact Hope Pillsbury of my staff at FTS 475-6725 if you have any questions regarding this memo.

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Attachments

cc: Luetta Flournoy, Region VII
Matt Hale, OSW
Margaret Schneider, OSW
Jim Bachmaier, OSW
Chet Oszman, OSW
Bill Kline, OSW
Mike Petruska, OSW
Chris Rhyne, OSW

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